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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Special Committee decision of 12 June 2006 concerning Puerto Rico

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I. Introduction

1. At its 9th meeting, on 12 June 2006 the Special Committee adopted draft resolution A/AC.109/2006/L.7 on the question of the Special Committee decision of 13 June 2005 concerning Puerto Rico. In paragraph 10 of the resolution, the Special Committee requested the Rapporteur to submit a report to it in 2007 on the implementation of the resolution. The present report was prepared by the Rapporteur of the Special Committee in compliance with that request. It considers Puerto Rico in the light of previous reports prepared by the Rapporteur, recent political and military developments in Puerto Rico and action taken by United Nations bodies on the matter.

II. Background information

A. General

2. Puerto Rico[1] is the most easterly and smallest island of the Greater Antilles, in the Caribbean Sea. It has a land area of 8,959 square kilometres, including the small nearby islands of Vieques, Culebra and Mona. More than three fourths of Puerto Rico is mountainous and the range that runs its length reaches an elevation of 1,338 metres at its highest point.

3. According to 2006 estimates, the population, which is primarily Spanish speaking, is around 3.9 million, although a certain number of Puerto Ricans also speak English. According to United States census estimates, Puerto Rico's rate of population growth averaged 0.7 per cent over the years from 2000 to 2005. Over the past four decades, the island's demography has been transformed from that of a traditional agrarian society into that of an industrial society, with population growth slowing and life expectancy rising sharply. Part of the slowdown in population growth has been the result of emigration of some 500,000 Puerto Ricans to the United States of America, in particular during the 1950s and 1960s. At present the Puerto Rican population in the United States mainland is slightly higher than in Puerto Rico.[2]

4. United States citizenship is granted to people born in Puerto Rico. They do not have the right to vote in United States presidential or congressional elections unless they reside on the United States mainland. In addition, the Supreme Court of Puerto Rico recognized the existence of Puerto Rican citizenship in a court decision. Subsequently, the Puerto Rican Department of State certified such citizenship, which Puerto Ricans may claim through a protocol established by the Puerto Rican Department of State. Under the current Commonwealth arrangements, authority over defence, international relations, external trade and monetary matters remains with the United States, while Puerto Rico has autonomy on tax matters, social policies and most local affairs. The main political parties in the Territory differentiate themselves mostly by their position on the ultimate political status of Puerto Rico, none being satisfied with the status quo. The Partido Popular Democrático (PPD), currently in power, favours an enhanced Commonwealth status,

[1] www.cia.gov/cia/publications/factbook, see Puerto Rico.

[2] Department of Federal Affairs of the Government of Puerto Rico and Angelo Falcon of the Puerto Rico Policy Institute, 2006.

which would be non-territorial and non-colonial, and retain United States citizenship, but would have greater governmental authority over their own affairs and more latitude to establish regional and international relations. The Partido Nuevo Progresista (PNP) favours Puerto Rico becoming a fully integrated state of the United States. Support for PPD remains slightly higher than for PNP. The third party, the Partido Independentista Puertorriqueño (PIP), favours independence for the island. Both of the main political parties have begun preliminary preparations for the next general elections, due for November 2008. The candidate of PNP, which is struggling with a series of fraud charges against senior party members, will be chosen in a potentially divisive primary election in 2007.[3]

B. Constitutional and political status

5. The 1952 Constitution of the Commonwealth of Puerto Rico is described in detail in paragraphs 91 to 119 of the report of the Rapporteur of the Special Committee of 1974 (A/AC.109/L.976). In brief, the Government consists of: (a) a Governor elected for four years at each general election; (b) a Legislative Assembly comprising two houses, the Senate (27 members) and the House of Representatives (51 members elected by direct vote of the adult population at each general election); and (c) a Supreme Court and lower courts. The United States extends its jurisdiction to Puerto Rico through the presence of the United States Federal Court. Puerto Rico is represented in the Government of the United States by a Resident Commissioner, who is a non-voting member of the United States House of Representatives, but a voting member of the committees on which he or she sits. Although it has its own courts, the Puerto Rican legal system is integrated into the United States federal judicial system via the First Circuit Court of Appeals. Federal law prevails over local law.

6. Even after the establishment of a constitutional Government for Puerto Rico in 1952, United States congressional authority over Puerto Rico remained unaltered. The United States Congress is vested with plenary power over Puerto Rico, while the island is vested with local authority over designated areas. All laws concerning the Territory's relations with the United States remained in force through the Federal Relations Act (see A/AC.109/L.976, paras. 120-132), under which Puerto Rico was brought within the trade, tariff and monetary systems of the United States. The United States also undertook responsibility for the defence of Puerto Rico. In 1958 Puerto Rico's Legislative Assembly requested changes in the Federal Relations Act, which were not enacted. In 1959 three bills requesting changes in the political status of the Territory were submitted to the United States Congress, but no action was taken on any of them. A plebiscite of 1967, in which the pro-independence sector did not participate, offered inhabitants the choice between independence, becoming a part of the United States or maintaining the Commonwealth status. The latter option was upheld by 60.41 per cent of voters.

7. The results of a 1993 plebiscite, with virtually identical options to those in the 1967 plebiscite, were 48.4 per cent for the status quo (Commonwealth), 46.2 per cent for statehood and 4 per cent for independence. Following this result, the Legislative Assembly of Puerto Rico requested the United States Congress to decide whether the definition of Commonwealth, as presented on the ballot, was

[3] *Economist Intelligence Unit*, Country Report 2006, Puerto Rico, January 2007.

acceptable. Congress replied negatively, arguing that the definition contained expectations that were not viable (A/AC.109/1999/L.13, paras. 172-180). The Puerto Rican Legislative Assembly then voted to hold another plebiscite in 1998. In February 1997, the Young Bill was introduced in the United States Congress, seeking to make the results of the proposed 1998 Puerto Rican plebiscite binding on the United States Government. The bill was adopted by the House of Representatives in March 1998, by a one vote margin of 209 to 208, but it was not acted upon by the Senate before the end of the Congressional session and thus expired.

8. The organization of the 1998 plebiscite continued as scheduled, despite the failure of Congress to bind the United States Government to the results. There was, however, much controversy regarding the wording of the ballot choices. The pro-Commonwealth PPD protested that the ballots, as drafted, misrepresented the Commonwealth status and deliberately sought to confuse its supporters by including another option, "Free association", the definition of which was very similar to "Commonwealth status". As a result of an opinion of the Supreme Court of Puerto Rico, the fifth option, "None of the above" was included on the ballot, and PPD encouraged its supporters to choose that option. The results of the plebiscite held on 13 December 1998 were as follows: 50.4 per cent for "None of the above"; 46.7 per cent for statehood; 2.3 per cent for independence; 0.3 per cent for free association; and 0.06 per cent for Commonwealth.

9. After the 1998 plebiscite, the then President of the United States, William J. Clinton, stated that he would work with Congress and leaders in Puerto Rico to clarify the status issue. He then established the President's Task Force on Puerto Rico's Status. On 5 December 2003, the White House named the 16 members of the Task Force. At the same time, the President, George W. Bush, amended President Clinton's Executive Order to require the Task Force to report on the progress made every two years instead of annually. In announcing the membership of the Task Force, a White House news release said that it "would seek to implement the policy set forth" under President Clinton's order. Leaders of both the pro-Commonwealth PPD and the pro-independence PIP have said that the move did not indicate any serious intention on the part of President Bush to take action on the political status of Puerto Rico in the near future, while the pro-statehood PNP welcomed the announcement as a sign that Washington, D.C., was interested in dealing with the issue after the Puerto Rico and United States elections in November 2004.[4]

10. In a December 2005 report, the President's Task Force on Puerto Rico's Status released its report, in which it recommended a two-stage process to approach the issue of Puerto Rico's status.[5] The Task Force reaffirmed the territorial nature of the relationship between the United States and Puerto Rico and recommended that a "federally sanctioned plebiscite" take place in 2006 to ascertain whether the people of Puerto Rico "wish to remain a United States territory subject to the will of Congress or to pursue a constitutionally viable path towards a permanent non-territorial status with the United States". The Task Force also recommended that if the voters chose to change the current territorial status, a second referendum should allow them to decide between statehood and independence. If the voters elected to maintain the current territorial status, the Task Force recommended that

[4] *Economist Intelligence Unit*, Country Report, Puerto Rico, December 2003.

[5] Report by the President's Task Force on Puerto Rico's Status, December 2005.

plebiscites be held periodically to "keep Congress informed of the people's wishes". During his statement before the Committee on Resources in the United States House of Representatives on 27 April 2006, C. Kevin Marshall, Deputy Assistant Attorney General, co-chair of the Task Force, said that the "New Commonwealth" option suggested by Governor Anibal Acevedo Vilá was not "consistent with the Constitution". In the same month, the Governor criticized the proposal as undemocratic and media supported his statement.[6]

III. Recent developments

A. Political

11. The last general election held in Puerto Rico took place in November 2004. Voters elected the Governor and the delegate to the United States Congress, members of the local Senate and Chamber of Representatives as well as candidates for a variety of municipal and local positions. The next general elections are due for November 2008.

12. In the gubernatorial race, the PPD candidate, former Resident Commissioner Anibal Acevedo Vilá, defeated the former Governor, Pedro Roselló González of PNP, thereby replacing Ms. Sila María Calderón, who chose not to seek a second term. With only 0.2 per cent of the votes separating the candidates, the election was submitted to a recount on 8 November 2004, and with a margin of only 3,228 votes, Mr. Acevedo Vilá was handed the victory. However, the official election result was not announced until 23 December 2004, as Mr. Roselló González contested the validity of certain ballots cast during the elections. From the Supreme Court of Puerto Rico, who ruled in favour of Mr. Acevedo Vilá, the case moved up to the First Court of Appeals for the First Circuit in Boston, Massachusetts, where three judges ruled that it was a question of state law, not federal law, and was therefore in the jurisdiction of the Supreme Court of Puerto Rico.

13. PNP won control of the legislature from PPD, taking 18 seats in the 27-member Senate and 32 in the 51-member House of Representatives. The independence party, PIP, kept its one seat in both chambers.

14. In the elections for the position of Resident Commissioner (Puerto Rico's non-voting representative in the United States Congress), Luis Fortuño of PNP defeated Roberto L. Prats Palerm of PPD.

15. The main issues of the elections were the economy, corruption, crime and, to a certain extent, the future financing of the State medical insurance plan and the pension system. Educational reform as a means of increasing job opportunities was also raised by both candidates. According to some observers, the question concerning the political status of Puerto Rico did not seem to weigh heavily in the campaign.[7]

16. With respect to the political status of Puerto Rico and its relationship with the United States, the debate was brought to the legislative forefront in April 2002, when both the Senate and the Legislative Assembly of Puerto Rico approved

[6] www.washingtontimes.com, 30 April 2006.

[7] *Economist Intelligence Unit*, Country Report, Puerto Rico, October 2004.

resolutions recommending the establishment of an assembly on the status of the Puerto Rican people as the most viable and appropriate mechanism to determine the island's future status.[8] This recommendation was supported by PPD, by the pro-independence PIP party and by entities such as the Puerto Rican Bar Association. However, it was opposed by PNP, which viewed the proposed mechanism as a futile, unilateral exercise because it did not engage the United States Government from the outset.[9]

17. The outcome of the 2004 general election signalled that the status question would run into a gridlock. The ruling party PPD favours the status quo, whereas PNP, which controls both the Legislature and the post of Resident Commissioner, is in favour of full United States statehood. PIP, which is smaller, supports an independent status for the island.[10] The mechanisms by which the two major parties propose to decide the status question are also different. PDP is in favour of a locally created statutory constitutional convention, which would work with the United States Congress to resolve the status question. PNP supports a referendum leading to a plebiscite with status alternatives defined by Congress, which would most likely exclude "commonwealth" as an option.[10]

18. Despite the seeming deadlock, Puerto Rico took significant steps in the process of self-determination throughout 2005. In February, Governor Acevedo Vilá proposed a referendum, to be held on 10 July 2005, whereby voters would have an opportunity to choose one of two proposed mechanisms to advance the status question.[11] The first procedure would be a formal request to the United States Congress to authorize a federally mandated plebiscite in Puerto Rico with the alternatives as defined by Congress. The second option would be the creation of a local Constitutional Assembly on Status selected by the people of Puerto Rico. Despite expectations to the contrary, in March, the Senate approved a bill that authorized the July referendum and included the Constitutional Assembly as a possible way to resolve the political relationship between the United States and Puerto Rico.[12] The bill included an amendment that obliged the House and Senate to pass legislation that would allow the people of Puerto Rico to choose a mechanism to determine status, in case the United States Government does not commit to a process of free determination by 31 December 2006. However, Governor Acevedo Vilá felt that the language of the bill was not strong enough on the option of the Constitutional Assembly and he vetoed the bill on 10 April.[13] In late April, the Legislature approved a resolution that did not require the signature of the Governor, which petitioned the United States Congress and the President to "respond to the democratic aspirations of the United States citizens of Puerto Rico" and enable them to choose a fully democratic form of government.[14] PDP lawmakers did not support that resolution. Intense discussions continued on the merits of a Constitutional Assembly versus direct vote as mechanisms to move the process of self-determination forward in Puerto Rico.

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[8] *Economist Intelligence Unit*, Country Report, Puerto Rico, July 2004.

[9] *The San Juan Star*, 8 October 2002.

[10] *The Puerto Rico Herald*, 13 January 2005.

[11] The Puerto Rico Federal Affairs Administration, 11 February 2005.

[12] *The Puerto Rico Herald*, 31 March 2005.

[13] *The Puerto Rico Herald*, 11 April 2005.

[14] Congressional Research Service, "Political status of Puerto Rico: Background, options and issues in the 109th Congress", 25 May 2005.

19. With both the legislature and the post of resident commissioner in Washington, D.C., the island's non-voting seat in the United States Congress, being controlled by the opposition PNP, there are no indications that the political deadlock will change, and agreement on a process of dealing with the future status of the island is unlikely during the current administration.

20. Meanwhile, Congress reopened debate over Puerto Rico's political status in early 2007. Puerto Rico Democracy Act of 2007 was introduced in the House of Representatives on 7 February 2007. The bill stated, inter alia, that:

> "The Puerto Rico State Elections Commission shall conduct a plebiscite in Puerto Rico during the 111th Congress, but not later than December 31, 2009. The ballot shall provide for voters to choose only between the following two options: (1) Puerto Rico should continue the existing form of territorial status as defined by the Constitution, basic laws, and policies of the United States. (2) Puerto Rico should pursue a path toward a constitutionally viable permanent nonterritorial status."

The document also mentioned that:

> "During the period beginning 1 October 2007, and ending on the date the President determines that all the plebiscites required by this Act have been held, the Secretary of the Treasury may allocate, from the funds provided to the Government of Puerto Rico under section 7652(e) of the Internal Revenue Code, not more than $5,000,000 to the State Elections Commission of Puerto Rico to be used for expenses of carrying out each plebiscite conducted under this Act, including for voter education materials certified by the President's Task Force on Puerto Rico's Status as not being incompatible with the Constitution and basic laws and policies of the United States. Such amounts may be as identified by the President's Task Force on Puerto Rico's Status as necessary for such purposes."[15]

Some media reports said that the report ignored the democratic wishes of the people of Puerto Rico.[16]

21. Another bill cited as "Puerto Rico Self-Determination Act of 2007" was introduced in the House of Representatives on 28 February to recognize the right of the People of Puerto Rico to call a constitutional convention through which the people would exercise their natural right to self-determination and to establish a mechanism for congressional consideration of such decision. The Constitutional Assembly is a procedural mechanism for the decolonization of Puerto Rico that has gained ground on the island in recent years, based on the understanding that any initiative should originate in Puerto Rico. According to the media reports, this mechanism has been supported by the Puerto Rico Bar Association.

22. Other political developments included a July 2005 vote for unicameral legislature approved by 84 per cent of voters. Although only 22 per cent of registered voters participated in that referendum, the results triggered a process

[15] The Library of Congress, Thomas (www.thomas.loc.gov), 110th Congress, 1st Session, 7 February 2007.

[16] www.courant.com, 27 April 2006.

whereby another referendum will be held in 2007 to potentially amend Puerto Rico's Constitution and establish a one-house system in 2009.[17]

23. In August 2005, the United States Court of Appeals for the First Circuit, in Boston, ruled that citizens of Puerto Rico do not have the right to vote in the United States presidential elections. The Court reasoned that Puerto Rico was not a State and it therefore could not have any voting members in the electoral college. The Court has rejected such a claim on three previous occasions.[18] An appeal filed in the United States Supreme Court was turned down in March 2006. Although the Supreme Court action was taken without comment, the United States Government's top Supreme Court lawyer said in a filing that the Appeals Court decision "is amply supported by constitutional text, unbroken tradition and uniform precedent".[19]

24. As described in previous reports, apart from general political questions, three specific issues have been raised before the Special Committee in recent years as resulting from the particular political status of Puerto Rico and its relationship with the United States: (a) the United States military presence in Puerto Rico, particularly on the island of Vieques; (b) the imprisonment in the United States of pro-independence Puerto Ricans accused of seditious conspiracy and weapons possession; and (c) the application of the death penalty to Puerto Ricans convicted on federal charges.

25. As in previous reports, the issue of the United States military presence in Puerto Rico will be dealt with in the section on military developments.

26. The issue of the Puerto Ricans accused of seditious conspiracy and weapons possession some 25 years ago and imprisoned in the United States has also been covered in previous reports. In essence, a number of Puerto Rican organizations and political and civil leaders have claimed over the years that these are essentially political prisoners and that they received disproportionately long sentences. In August 1999, President Clinton offered to release the prisoners, conditionally, if they formally renounced the use of violence. This offer was accepted by 11 of the original 15 prisoners and one accepted a bargain by which he would be set free in five years. Supporters of those who were released noted that the conditions included tight controls over their actions and statements, which effectively prevent them from continuing to advocate independence for Puerto Rico. On 10 September 2001, a petition for the early termination of supervision was submitted on behalf of the nine former prisoners still subject to parole conditions. In July and October 2005, the United States Parole Commission terminated supervision of eight of the nine former prisoners. One case is still pending.[20] Two of the original 15 prisoners were released, Antonio Camacho Negrón in May 2002 and José Solís Jordán, in November 2002.[21] However, as of October 2005, Camacho Negrón was being sought by the Federal Bureau of Investigation (FBI) for refusal to report to a federal penitentiary to serve a 15-year sentence. Some reports indicate that this FBI action may be in connection with the FBI investigation resulting from the killing of Filiberto Ojeda Ríos (for more details see para. 27 below).[22] The two remaining

[17] *The Puerto Rico Herald*, 11 July 2005.

[18] *The New York Times*, 5 August 2005.

[19] CNN, 20 March 2006, www.cnn.com; BBC News, 21 March 2006, www.bbc.co.uk.

[20] National Boricua Human Rights Network, www.prcc-chgo.org, 2 August 2005.

[21] www.boricuanacional.org.

[22] www.wbai.org.

prisoners, Oscar López Rivera and Carlos Alberto Torres, are scheduled to leave prison in 2027 and 2024, respectively. In July 2004, the Human Rights Committee began a campaign to petition President Bush for the release of López Rivera and Torres. Haydée Beltrán, who is serving an 80-year sentence, elected to pursue her cause separately from the group of 15.[23] According to Puerto Rican media, there is a consensus among the people of Puerto Rico in favour of the release of those imprisoned for cases related to the struggle for the independence of Puerto Rico.

27. On 23 September 2005, FBI agents shot and killed Filiberto Ojeda Ríos. Ojeda Ríos was one of Puerto Rico's most controversial figures, who in 1976 founded Los Macheteros, more formally known as the Boricua People's Army. The group was an underground paramilitary organization dedicated to freeing Puerto Rico from American "colonial" rule. Throughout his time with the group, Ojeda Ríos was implicated in a number of criminal activities including the 1983 raid on a Wells Fargo depot in West Hartford, Connecticut, from which $7.2 million was stolen. Ojeda Ríos jumped bail in 1990 while awaiting trial for the robbery. In 1992, he was convicted in absentia and sentenced to 55 years in prison. On 20 September 2005, FBI agents surrounded the house where Ojeda Ríos was hiding in Hormigueros, Puerto Rico. Ojeda Ríos was injured following a shoot-out on 23 September, a date of historical significance to the pro-independence supporters. Autopsy results indicated that he bled to death after being hit by a single bullet. The circumstances of his death stirred controversy and prompted officials in Puerto Rico and the United States, including Governor Acevedo Vilá, Resident Commissioner Fortuño and three Puerto Rican members of the United States Congress, to call for an independent investigation of FBI actions.[24] The overall perception of the death of Ojeda Ríos in Puerto Rico is that he was allowed to bleed to death. The media in Puerto Rico has reported that persecution of independence supporters has increased.

28. According to published sources, while the investigation is under way, concern continues to be expressed by many sectors of the Puerto Rican population regarding FBI actions in Puerto Rico, which many see as unfairly targeting pro-independence activists.[25]

29. The issue of the application of the death penalty to Puerto Ricans convicted of crimes was described in detail in paragraph 23 of the 2000 report (A/AC.109/2000/L.3), as were recent cases in which the death penalty was sought against Puerto Ricans. Despite the fact that the death penalty is prohibited in Puerto Rico, the United States Department of Justice has sought the death penalty for 15 Puerto Rican defendants since 1992, resulting in one of the highest death penalty rates per capita of any state or Territory within the United States. The Puerto Rico Supreme Court ruled in 2000 that the death penalty violated the Puerto Rican constitution, but a year later, the United States Circuit of Appeals in Boston overturned the ruling, saying Puerto Rico is subject to federal law (see para. 5 above). The United States Supreme Court upheld the decision. As at March 2005, the United States Attorney General authorized federal prosecutors to seek the death

[23] *The Puerto Rico Herald*, 29 July 2004.

[24] *The Economist*, 29 September 2005; *The Nation*, 24 October 2005; *The New York Times*, 28 September 2005; *The Washington Post*, 29 September 2005; www.democracynow.com, 26 September 2005; Letter to the FBI Director from Representatives José E. Serrano (D-NY), Nydia Velázquez (D-NY) and Luis Gutiérrez (D-IL), 26 September 2005, www.preb.com.

[25] *The Miami Herald*, 27 March 2006.

penalty for the second time in 75 years in a case against two young men who allegedly killed a security guard in an attempted robbery of an armoured vehicle.[26] Although the two men faced the death penalty upon their conviction, their lives were spared when the jury decided on life imprisonment instead.[27]

30. Popular opinion in Puerto Rico is strongly against the death penalty and a coalition of religious, community organizations and political leaders have vowed to continue fighting attempts to impose capital punishment on the island.

B. Military

31. As has been described in previous reports, for many years Puerto Rico has held an important military-strategic position within the United States Southern Command. In addition to its other military operations in Puerto Rico, from 1941 to 1 May 2003 the United States Navy operated on Vieques, an island of 9,500 inhabitants located eight miles off the east coast of Puerto Rico. Vieques was used for naval gunfire support, air-to-ground ordnance training and amphibious assault exercises. Details of the military exercises conducted on Vieques during the period that the Navy owned part of the island and of the related civil disobedience campaigns, arrests and lawsuits are to be found in previous reports of the Special Committee (A/AC.109/1999/L.13, paras. 18-22, A/AC.109/2000/L.3, paras. 24-30, A/AC.109/2001/L.3, paras. 29-38, and A/AC.109/2002/L.4, paras. 27-36). According to a news release following the cessation of the military operations, the Department of the Navy retained responsibility for the environmental clean-up of the property and would demolish and remove all facilities and structures in the area. The media reports about the official end of the Navy's presence on Vieques on 1 May 2003 were followed by four days of activities celebrating the end of the United States military presence and the start of a new future for the island. (See A/AC.109/2005/L.3, paras. 27-29 for more details on the process leading up to the withdrawal of the United States Navy from Vieques).

32. Following the withdrawal of the Navy from Vieques, three related issues remained to be clarified: (a) the future development of Vieques and its environmental clean-up; (b) definitive conclusions regarding the effects of the military exercises on the health of Vieques residents; and (c) the future of the Roosevelt Roads Naval Station on the main island of Puerto Rico.

33. Regarding the development of Vieques, the Puerto Rican Government announced in 2002 infrastructure and job creation investments of $50 million over the next four years within the Renacer Viequense programme.[28] At the same time, the island is attracting new tourism ventures, such as the 156-room Wyndham Martineau Bay Hotel, which opened in 2003.[29]

34. In January 2005, the Government of Puerto Rico released a master plan for sustainable development of Vieques and Culebra. The plan called for low-impact development on the islands and recommended that they adopt a policy of encouraging ecotourism, which would emphasize the natural attractions of the

[26] www.puertorico-herald.org/issues2/2005.

[27] *The Puerto Rico Herald*, 3 May 2005.

[28] www.fortaleza.gobierno.pr, 6 June 2002 and 20 October 2002.

[29] Associated Press, 25 February 2003.

islands and discourage the construction of large hotels. According to the World Resources Institute, ecotourism was growing at an annual rate of between 10 and 30 per cent, whereas conventional tourism was expanding at only 4 per cent annually. Although most residents hailed the plan, some warned that political divisions in Vieques might delay its implementation.[30]

35. Vieques has been sectioned off for the purpose of clean-up activities. The western side was transferred to the United States Department of the Interior, the municipality of Vieques and the Puerto Rico Conservation Trust, while the eastern part was transferred to the Fish and Wildlife Service of the Department of the Interior, to be added to the current Vieques National Wildlife Refuge.[31]

36. With regard to the Vieques clean-up, on 9 May 2003, the office of the Puerto Rico Resident Commissioner announced that the Armed Services Committee of the United States Senate had approved an amendment ordering the Navy, in cooperation with the Department of the Interior and the Environmental Protection Agency, to undertake a clean-up project of the land in Vieques that had been transferred to the Department of the Interior.

37. On 5 January 2004, the Environmental Protection Agency (EPA) announced the beginning of the investigation of areas of eastern Vieques under the Resource Conservation and Recovery Act. As part of this investigation, contractors working for the United States Navy took samples of surface and subsurface soil and groundwater from 10 newly installed wells. EPA, in cooperation with the Puerto Rico Environmental Quality Board, provided oversight of the investigation. EPA also collected soil and groundwater samples and conducted independent analyses. On 13 August 2004, the Agency proposed that former Navy sites on Vieques and old Army sites on the island of Culebra be included on the Superfund National Priorities List. EPA announced the formal inclusion of Vieques on the list of the most hazardous waste sites in the United States on 7 February 2005. Shortly thereafter, the Navy announced that it had budgeted $76 million for the clean-up of Vieques for the period of 2006-2009.[32]

38. The Navy spent a total of $17.8 million through the end of 2004 on clean-up activities on Vieques. As of March 2005, the Navy estimated that an additional $112 million would be needed from 2005 until completion of the clean-up of both the western and eastern areas of the island. As of the end of 2004, the Army had identified 17 potentially contaminated sites on western Vieques. A 2005 clean-up investigation concluded that 9 of the 17 sites required "no further action". According to the Navy report, five of the eight remaining sites exhibited "low levels of contamination and no unacceptable risk identified outside waste sites". Conclusions regarding the other three sites were pending as of July 2005. The Navy estimated that the total cost of clean-up on western Vieques would be close to $25 million.[33]

39. In eastern Vieques, the Navy has identified 20 "waste storage and disposal sites", and 23 other potentially contaminated "areas of concern". As of July 2005, 12

[30] *The Puerto Rico Herald*, 20 January 2005.

[31] Environmental Protection Agency, 1 December 2004, www.epa.gov/region02/vieques/history.

[32] *The Puerto Rico Herald*, 9 February 2005.

[33] Congressional Research Service Report for Congress, "Vieques and Culebra Islands: An analysis of cleanup status and costs", 7 July 2005.

of the 20 "waste" sites had been examined. Thorough examination of those sites is important as it will determine the degree to which the sites will be cleaned up. If there were no risk of exposure through human contact with soil or surface water, clean-up would be less extensive. For example, the Live Impact Area of the former bombing range is currently off limits to Vieques residents. If it were found that contaminants had migrated off the restricted area, a more thorough clean-up would be required. The Navy estimated that the total cost of clean-up of eastern Vieques would be close to $106 million.[34]

40. Culebra Island, which is located about nine miles north of Vieques, was also part of the Navy training facilities. Although military activities ceased on Culebra in 1975 in response to public safety concerns, clean-up of the island has been slow. The lack of activity on Culebra was partly due to legal issues regarding the use of federal funds for clean-up. Once the issue was resolved, the United States Army Corps of Engineers began a limited surface removal of munitions in 1995. In 2004, the Corps spent $4.8 million on the removal of munitions, and the Army expected to spend $2.3 million in 2005.[35] On 3 April 2005, the Puerto Rico Environmental Quality Board announced that the United States Army Corps of Engineers had been awarded a $1.9 million contract to clean up Culebra. The clean-up would include the removal and disposal of all munitions and explosives in the areas previously designated under the Previously Used Sites for Defence Programme.[36] The Army estimated that an additional $30.1 million would be needed to complete the clean-up and address human health, safety and environmental impacts.[37]

41. According to media reports in March 2006, though United States military exercises were halted in Puerto Rico, residents were still bitter about their memory of six decades of naval bombardments. Residents' hostilities were centred on why it was taking the United States Government so long to begin the clean-up campaigns. While EPA reported that its plan was progressing on schedule, this news only served to stoke fresh local hostilities. The media reports said that bombs were going off in Vieques again, and the blasts might last eight years or more. This time the explosions were part of the military programme to detonate unexploded missiles, rockets and other ordnance remaining from the years of military exercises. Officials said that there can be no meaningful environmental clean-up until the work is complete.[38]

42. Regarding the possible effects of the military exercises on the health of Vieques residents, the debate continues between the Navy, which maintains that its bombing and training exercises have done nothing to harm the health of Vieques residents, and those who maintain that there have been abnormally high cancer rates and other health problems on the island. A study conducted by the federal Agency for Toxic Substances and Disease Registry on potential pathways of contamination between the Navy bombing range and the civilian areas concluded in August 2003 that there was no apparent public health hazard.[39] Nevertheless, a study by the

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[34] *The Puerto Rico Herald*, 9 February 2005.

[35] Congressional Research Service Report for Congress, "Vieques and Culebra Islands: An analysis of cleanup status and costs", 7 July 2005.

[36] *The Puerto Rico Herald*, 4 April 2005.

[37] Congressional Research Service Report for Congress, "Vieques and Culebra Islands: An analysis of cleanup status and costs", 7 July 2005.

[38] *Chicago Tribune*, Knight Ridder, 27 March 2006.

[39] Agency for Toxic Substances and Disease Registry, communiqué, 18 December 2002.

Puerto Rico Department of Health concluded in May 2005 that the risk of developing cancer in Vieques had risen about 35 per cent between the periods from 1980 to 1984 and from 1995 to 1999.

43. The third related issue is the future of the Roosevelt Roads Naval Station, home to the United States Naval Forces Southern Command from 1941 to 31 March 2004. Built on the eastern tip of Puerto Rico, seven miles from Vieques and covering 8,612 acres, it employed some 4,800 permanent staff and temporary contractors and was estimated by the Navy to inject more than $300 million into the local economy each year. However, in January 2003, Admiral Natter, Commander-in-Chief of the Atlantic Fleet, announced that, without Vieques, the Roosevelt Roads facilities would no longer be necessary,[40] and on 24 September 2003, the United States Congress formally approved the closing of the Naval Station as part of a defence-spending bill passed in Washington, D.C. Puerto Rico's Resident Commissioner, who opposed the closing of the naval base and fought to have the land transferred to the territorial Government, said that the Government of Puerto Rico would be able to participate in deciding on future uses of base land and that it would have access to about 40 per cent of the revenues from the sale of lands.[41] On 2 October 2003, President Bush signed the decision to shut down the Roosevelt Roads Naval Base. The base was effectively closed on 30 January 2004. On 31 March 2004, its status was changed from that of a United States military base to "caretaker status".

44. Puerto Rico's Resident Commissioner announced in 2004 that the Government of Puerto Rico, in cooperation with the Pentagon, had started work on developing the land immediately after the closing of the base. He said that the Department of Commerce had a development plan, called Portal del Futuro de Puerto Rico, which the United States Department of Defense and the Governor viewed favourably.[42] The plan called for the use of 3,868 acres for public and private development, while 3,387 acres of swamps, habitats and *mogotes* would be conserved. However, the development was subject to a satisfactory environmental evaluation by the Navy. The Governor suggested that the area would be converted into an airport so that new airlines could fly to Puerto Rico.

C. Economic

45. Puerto Rico has an industrialized economy with particular characteristics derived from its island geography and close institutional links to the United States. Its per capita gross domestic product is $19,100, whereas that of the United States is $43,500.[43] Economic performance is closely tied to the United States business cycle, its tax regime and the level of federal transfers. Manufacturing accounts for 40 per cent of gross domestic product, whereas agriculture contributes less than 1 per cent. There is a large high-technology manufacturing sector, which has sizeable operations in pharmaceutical, electronics and scientific and precision instruments.[44]

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[40] Associated Press, 11 and 16 January 2003.

[41] *Caribbean Insight*, vol. 26, No. 33 (2003).

[42] www.house.gov/acevedo-vila, 16 December 2003.

[43] www.cia.gov, 15 March 2007.

[44] *Economist Intelligence Unit*, Country Profile 2006, Puerto Rico, January 2007.

46. According to media reports, the most exhaustive study of the Puerto Rican economy done in the past 75 years says that the hoped-for renaissance will require that the private sector and Government join together to create thousands of jobs and that tax and other policies have to be developed to make this happen. The study, "Economy of Puerto Rico: restoring growth", jointly conducted by the Center for the New Economy in San Juan and the Brookings Institution in Washington, D.C., examines the island's economic performance from its post-World War II boom through its stagnation during the past 25 years. The study found that reviving growth will require increasing the proportion of Puerto Ricans, who are working both through enhancing incentives to seek employment and through expanding private sector job opportunities.[45]

47. Industrialization was encouraged by the Industrial Incentive Act of 1954, which granted concessions to United States companies that located plants on the island. In addition, section 936 of the United States Federal Tax Code (tax code) provided generous tax incentives to such companies, including the right to tax-free repatriation of profits. Through the years, these policies helped to make Puerto Rico an "offshore manufacturing outpost"[46] of the United States, transforming the economy from a sugar-dominated Caribbean plantation economy to a modern industrialized one. In 1996, however, a budget-conscious United States Congress adopted legislation that began phasing out these tax incentives as part of its budget reconciliation and abolished them entirely on 31 December 2005.[47] According to media reports, on 21 March 2007, American companies oppose statehood for Puerto Rico, since it would entail the loss of their tax-free status there. More than half of the Fortune 100 companies operate in Puerto Rico, with billions of dollars invested in factories and trained workers. Eli Lilly, Abbott Laboratories, Microsoft, Coca-Cola and others do not want Puerto Rico to lose its tax-free commonwealth status, politicians and academics say.[48] In addition, labour-intensive manufacturing of textile products and clothing has declined as a result of overseas competition and partly owing to the 936 phase-out. Thus, a major challenge for Puerto Rico's economic policy over the past several years has been to prepare the economy for the effects of the phase-out of section 936 tax exemptions by reducing the island's dependence on manufacturing and promoting the development of the high-technology and tourism sectors. According to media reports in April 2006, hundreds of investors and businessmen from the United States and the Caribbean met for the first time in Puerto Rico at the Puerto Rican Conference for Investment to discuss investment opportunities on the island and to underscore the economic advantages inherent to its geographic location.[49] On March 2007, media reports stated that Puerto Rico received 5.6 million tourists during fiscal year 2006, an increase of 3.4 per cent from 2005.[50]

48. Although the overall impact of the 936 phase-out on the economy of Puerto Rico has been negative, international firms, especially the pharmaceutical and medical-device companies, have found a way to mitigate the negative effects of the change in the tax code. By acquiring a "controlled foreign corporation" status,

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[45] www.usanewswire.com, 25 May 2006.

[46] *Economist Intelligence Unit*, Puerto Rico Country Profile, 2005.

[47] *Journal of Commerce*, 23 January 2006.

[48] Associated Press, Dan Caterinicchia, 21 March 2007.

[49] www.biz.yahoo.com, Press Release: Puerto Rico Chamber of Commerce, 25 April 2006.

[50] Associated Press, 13 March 2007.

companies may utilize section 901 of the tax code, which imposes federal taxes on profits only when they are transferred back to the 50 States. As a result, the pharmaceutical industry continues to be one of Puerto Rico's most robust sectors. The industry has so far generated close to 30,000 jobs, which represent about 25 per cent of the island's 120,000 manufacturing jobs and accounts for nearly 26 per cent of Puerto Rico's GDP.[51]

49. Some 50 government agencies, including 1,500 state schools, were forced to close on 1 May 2006, as the Government ran out of the funds needed to keep on functioning until the end of the financial year on 30 June. The Governor blamed the crisis on the refusal of PNP to approve legislation creating a 7 per cent tax, which would provide the Government with resources to repay a loan needed to meet the 740-million-dollar shortfall in the budget. A compromise deal, passed in the island's Senate on 1 May, would introduce a 5.9 per cent sales tax — less than the Government wanted, but more than the 4 per cent (plus 1.5 per cent for local councils) advocated by PNP. However, there was still deadlock in the lower House, where the Government required an additional eight votes to pass the measure.[52] As reported by the media on 9 May 2006, the Governor announced that a compromise was reached to resolve the island's week-long fiscal crisis. The agreement was reached just one day ahead of a series of union-sponsored protests intended to disrupt the island's economy and the same day that Moody's Investors Service downgraded some of Puerto Rico's bonds to junk status as a result of the crisis.[53] On 5 July 2006, the media reported that Puerto Rico's Governor signed a bill on 4 July creating the island's first sales tax of up to 7 per cent, ending a week-long stalemate with the House leader, who had refused to approve the legislation.[54]

50. Between July and September 2005, the Puerto Rican economy grew by 2.5 per cent as compared to the same period the previous year. Employment rose by 3.1 per cent and was expected to continue to grow in light of several new investment projects. On 17 November 2005, Governor Acevedo Vilá inaugurated the Puerto Rico Convention Center, which is expected to create 6,000 jobs and produce around $300 million in annual revenue. Other developments include the November 2005 announcement by Merck, a United States pharmaceutical company, to invest $300 million in its existing plant in Barceloneta. That project will save the 200 jobs slated for elimination as part of the company's worldwide reorganization. Amgen, the world's largest biotech company, issued a similar announcement, indicating an expansion of its existing plant in Juncos. That development is expected to create 900 new jobs.[55] As reported in the media on 19 May 2006, the United States Department of Labor announced that claims for unemployment benefits surged by 42,000 in the first week of May to 367,000, largely due to a partial government shutdown in Puerto Rico. It was the highest seasonally adjusted level since early October, when jobless claims were inflated by the damage caused by Hurricanes Katrina and Rita. Analysts expected claims to come to only 318,000 in May 2006.[56]

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[51] *Journal of Commerce*, 23 January 2006; *The Puerto Rico Herald*, 30 June 2005.

[52] www.oxan.com, 3 May 2006.

[53] www.nytimes.com, 9 May 2006.

[54] www.herald.com, 5 July 2006.

[55] *Economist Intelligence Unit*, Country Report, Puerto Rico, January 2006.

[56] www.caribbeannetnews.com.

51. In 2003, the Government of Puerto Rico announced a programme of investment in infrastructure and public works intended to stimulate the economy (part of a total $6 billion investment package over four years), which includes the mass transit system Tren Urbano, the trans-shipment hub, Port of the Americas, and other, lower profile projects, is under way. One of the projects, the Tren Urbano, was completed in June 2005 after a significant delay and budget overruns.[57] Another project, Port of the Americas, has been ongoing since February 2004, when local and international companies were invited to submit bids for its construction and operation. The Government of Puerto Rico has committed a total of $250 million to the construction of the Port. The first of four phases of the project, the construction of Piers 4, 5 and 6, was successfully completed in November 2004, two months ahead of schedule and at a cost of $40 million.[58] In March 2005, the Government Development Bank approved the release of funds for phase two of the project, which is expected to cost $70 million and take until 2009 to complete.[59]

52. In addition to the $6 billion investment package, the Government of Puerto Rico continued to take other steps to stimulate the island's economy throughout 2005. In his March 2005 budget address, Governor Acevedo Vilá announced new Government funding for the development of 1,000 new small businesses, $30 million; for tourism, $21.6 million, of which $10.6 million would be slated for cruiseship incentives; and for strengthening agriculture, $4 million. The Governor also announced several strategic projects to encourage economic activity and economic growth. These projects include the Portal del Futuro programme to develop the former Roosevelt Roads Naval Base in Ceiba and the Ciudad Red project, which plans to utilize the Tren Urbano route as its cornerstone for urban and economic development. Other initiatives include building the University of Puerto Rico Molecular Science Centre near the University Tren Urbano station in Río Piedras, $183 million for Port of the Americas, $15 million to prepare Mayagüez for the 2010 Central American-Caribbean Games, and $629 million for the Highway and Transportation Authority.[60]

IV. Previous action taken by the United Nations

A. General

53. Since 1953, the United States has maintained a consistent position regarding the status of Puerto Rico and the competence of United Nations organs to examine that status, based on General Assembly resolution 748 (VIII) of 27 November 1953, by which the Assembly released the United States from its obligations under Chapter XI of the Charter of the United Nations. In paragraph 9 of the resolution, the General Assembly expressed its assurance that, in accordance with the spirit of the resolution, the ideals embodied in the Charter of the United Nations, the traditions of the people of the United States and the political advancement attained by the people of Puerto Rico, due regard would be paid to the will of both the Puerto Rican and American peoples in the conduct of their relations under their legal

[57] *The Puerto Rico Herald*, 7 June 2005.

[58] www.portoftheamericas.com.

[59] *The Puerto Rico Herald*, 4 March 2005; www.portoftheamericas.com.

[60] *The Puerto Rico Herald*, 24 March 2005

stature, and also in the eventuality that either of the parties to the mutually agreed association might desire any change in the terms of that association. Since then, the United States has maintained that Puerto Rico has exercised its right to self-determination, has attained a full measure of self-government, has decided freely and democratically to enter into a free association with the United States and is, therefore, as stated explicitly in resolution 748 (VIII), beyond the purview of United Nations consideration. The Puerto Rican forces in favour of decolonization and independence have contested this affirmation.

54. Information on action taken by United Nations bodies with respect to Puerto Rico prior to 1974 is contained in the 1973 report of the Rapporteur (A/AC.109/L.976). Information since then can be found as follows: A/AC.109/L.1191 and Add.1 (for 1974 to 1976); A/AC.109/L.1334 and Add.1-3 (for 1977 and 1978); A/AC.109/L.1436 (for 1979 to 1981); A/AC.109/L.1572 (for 1981 to 1985); A/AC.109/1999/L.13 (for 1984 to 1998); A/AC.109/2000/L.3 (for 1999); A/AC.109/2001/L.3 (for 2000); A/AC.109/2002/L.4 (for 2001); A/AC.109/2003/L.3 (for 2002); A/AC.109/2004/L.3 (for 2003); and A/AC.109/2005/L.3 (for 2004) and A/AC.109/2006/L.3 (for 2005).

B. Action taken by the Special Committee

55. At its 8th meeting on 12 June 2006, by adopting the suggestions relating to the organization of work put forward by the Chairman (see A/AC.109/2006/L.2), the Special Committee decided to take up as appropriate the item entitled "Special Committee decision of 13 June 2005 concerning Puerto Rico" and to consider it at plenary meetings.

56. Also at the 8th meeting, the Chairman of the Special Committee drew attention to a number of communications received from organizations requesting to be heard on Puerto Rico by the Committee. At the same meeting, the Special Committee agreed to accede to those requests and heard the following representatives of the organizations concerned at its 8th and 9th meetings (see A/AC.109/2006/SR.8 and 9):

- 8th meeting: Mr. Fontanet Maldonado (Colegio de Abogados de Puerto Rico); Mr. Ortíz Guzmán (Organización Autonomista Pro Estado Libre Asociado de Puerto Rico (PROELA)); Mr. Martín-García (Partido Independentista Puertorriqueño); Ms. Centeno Rodríguez (Puertorriqueños en Defensa del Patrimonio Nacional); Mr. Rivera Reyes (Colectivo Autonomista Puertorriqueño); Mr. Carvajal Moreno (Conferencia Permanente de Partidos Políticos de la América Latina y el Caribe); Mr. Alfonsín (Comité para América Latina y el Caribe de la Internacional Socialista); Ms. Ramos (American Association of Jurists); Mr. Brás (Causa Común Independendista and Comité Puerto Rico en la Organización de las Naciones Unidas); Mr. Castillo Morales (Partido Nacionalista de Puerto Rico); Mr. Duprey Salgado (Movimiento Autonomista Socialdemócrata de Puerto Rico); Mr. Ojeda Serrano (Movimiento Independista Nacional Hostosiano and Coordinadora Nacional Rompiendo el Perímetro); Mr. Sánchez (Coordinadora Nacional Rompiendo el Perímetro); Mr. Ramos Rosado (ProLibertad Freedom Campaign); Mr. Guadalupe Ortiz (Vieques Sí); Mr. Malmierca Díaz (Cuba);
- 9th meeting: Mr. Maleki (Islamic Republic of Iran); Ms. Nuñez de Odreman (Bolivarian Republic of Venezuela); Mr. Malmierca Diaz (Cuba); Eduardo Villanueva Muñoz (Comité de Derechos Humanos de Puerto Rico);

Ms. Ramirez (United States Citizens from Puerto Rico); Mr. Torres Platet (Gran Oriente Nacional de Puerto Rico); Mr. Velgara (Vieques Support Campaign); Ms. Brassell (United for Vieques, Puerto Rico); Mr. Pesquera Sevillano (Movimiento Independentista Nacional Hostosiano); Mr. Bhatia (Puerto Rico Federal Affairs Administration); Mr. Nenadich (Consejo Nacional Para la Descolonización); Mr. Estrada (Socialist Workers Party); Mr. Rodríguez Banchs (Frente Socialista de Puerto Rico); Mr. Dalmau Ramírez (Partido Popular Democrático); Mr. Irizarry (Estudiantes de Derecho Hostosianos Pro Independencia); Ms. Valdez de Lizardi (Puertorriqueños ante la Organización de las Naciones Unidas); Mr. Baquero Navarro (Fundación Acción Democrática Puertorriqueña); Mr. Berrios Dávila (Acción Civil para el Status de Puerto Rico); Ms. Rexach (National Advancement for Puerto Rican Culture); Mr. Adames (Centro Literario Anacaona); Mr. Malmierca Díaz (Cuba); Mr. Adames (Centro Literario Anacaona); Mr. Malmierca Díaz (Cuba); Ms. Grady Flores (Ithaca Catholic Worker Vieques Support Group).

57. At the 8th meeting, the representative of Cuba introduced draft resolution A/AC.109/2006/L.7. The representative of the Islamic Republic of Iran explained his support for the text. Also at that meeting, the Special Committee adopted the draft resolution contained in A/AC.109/2006/L.7 without a vote.

C. Action taken by the General Assembly

58. During the sixty-first session of the General Assembly, no draft resolution on this issue was submitted to the Assembly for action.